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October 9, 1996

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VIA EXPRESS MAIL

The Honorable William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20574

DOCKET FILE COPY ORIGINAL

Re: 311 reservation
CC Docket No. 92-105

Dear Mr. Caton:

Enclosed for filing is an original and 14 copies of the Initial Comments of the Maryland Public Service Commission. Please distribute a copy to each of the Commissioners.

Sincerely,

Susan Stevens Miller

Susan Stevens Miller
Assistant General Counsel

SSM:mc
Enclosures

cc: International Transcription Service
Suite 140
2100 M Street, N.W.
Washington, D.C. 20037

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

IN THE MATTER OF THE RESERVA-)
TION OF 311 FOR USE BY)
COMMUNITIES FOR NON-EMERGENCY)
POLICE TELEPHONE CALLS)

CC DOCKET NO. 92-153

INITIAL COMMENTS OF THE
MARYLAND PUBLIC SERVICE COMMISSION

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I. INTRODUCTION

By letter dated August 26, 1996, the United States Department of Justice's Office of Community Oriented Policing Services ("DOJ") requested that the Federal Communications Commission ("FCC" or "Commission") reserve the 311 code on a national basis for use by communities for non-emergency police telephone calls. In its letter, DOJ specifically mentions its plans to support and evaluate a pilot implementation of the non-emergency number project in Baltimore, Maryland. The Maryland Public Service Commission ("MDPSC") respectfully submits these comments in order to apprise the Commission of the current status of Maryland's non-emergency number project and in support of DOJ's request that 311 be reserved for non-emergency police telephone calls.

II. BACKGROUND

An N11 code is a three digit telephone number. Under the North American Numbering Plan, the "N" represents a number from two through nine and the remaining digits are ones. Thus,

eight N11 codes are possible. However, six are currently used in Maryland. 411 is used for directory assistance and 911 is used for emergency services. 611 and 811 are used by Bell Atlantic-Maryland to access centralized repair services and the business offices respectively. Finally, 211 and 311 now are used by Bell Atlantic-Maryland for line testing. However these two codes could be relinquished and made available for other purposes. Therefore, a maximum of four codes are available in Maryland: 211, 311, 511 and 711. N11 codes are considered desirable because they are easy to remember and quick to dial.

Previously, the MDPSC addressed the issue of the appropriate use of N11 codes. In 1993, the Washington Post Company ("Post") filed a petition seeking assignment of an N11 code on a trial basis through which the Post would make information services available to the public. The Baltimore Sun Company subsequently intervened in the proceeding and also requested a N11 code for similar purposes. The matter was set for hearing before the Hearing Examiner Division. After considering all the evidence, the Hearing Examiner found that the assignment of N11 codes for commercial use should not be granted because these codes should be reserved for public purposes. The Hearing Examiner's decision was upheld by the Commission on appeal.¹

¹ In the Matter of the Petition of the Washington Post Company Requesting the Assignment of an N11 Code, Case No. 8582, January 10, 1995. (Appendix A)

III. Maryland's 311 Pilot Project

Introduced by AT&T in 1968, 911 provides a rapid response to life-threatening situations. This system has worked well across the United States. So well, it is now overburdened in many jurisdictions. In response to this problem, President Clinton directed the DOJ and the FCC to develop a national community policing number for non-emergencies that will be as easy to remember as 911. The purpose of this community policing number is to alleviate overburdened 911 systems and to speed up action on true emergencies. Also, the new non-emergency number will assist police who are implementing community policing strategies.

On August 12, 1996, AT&T Communications of Maryland ("AT&T") filed a petition with the MDPSC for Assignment of a National Policing N11 Code.² This special three digit code was required for a National Community Police pilot project. This project was jointly sponsored by DOJ, the Baltimore City Police Department ("BCPD") and AT&T. Baltimore City was selected for the National Community Police Number trial, which would allow the BCPD to test a free non-emergency number for calls to the police.

The sponsors of the pilot project sought a three-digit code because the public is conditioned to dial "911" to reach the police department.³ The new number is to be used to offer

² Initially, AT&T urged the MDPSC to assign specific N11 code 511. After being informed that 311 was the code the FCC was considering using for a national non-emergency police number, AT&T amended its petition to request the 311 code rather than the 511 code.

³ In fact, efforts to popularize dialing "911" have been almost too successful, since citizens now routinely dial 911 to reach the police

residents an alternative way of receiving help from local police without tying up lines designed to quickly handle life-threatening situations.

The 311 calls will be handled by a new technology developed by AT&T called Intelligent Call Processing. Initially, incoming calls from anywhere in Baltimore City will be routed to the police department on Fayette Street. Eventually, calls will be routed to the nearest local policing facility as determined by BCPD. Those facilities can include police precincts, community policing organizations or an officer on the beat carrying a cellular phone. The non-emergency number service also includes a database that will collect a variety of information including the volume of calls by location, time of day and geographic origin as well as the subject of the calls received. This information will enable police to refocus resources where they are most needed. As a result, the police should be able to work with citizens more effectively. The use of the new three-digit code will require local exchange carriers to modify their switching facilities in order to recognize the new number. This is accomplished by reprogramming the switch software.⁴

department. For example, in 1995, the Baltimore City Police handled 1,331,601 911 calls. Of those, approximately 60% or 798,960 were deemed non-emergencies.

⁴ By letter dated September 13, 1996, AT&T requested that the MDPSC direct all local exchange companies to modify their switching facilities to allow the use of the 311 code for non-emergency assistance in Baltimore City. The MDPSC ordered all local exchange companies to take appropriate action to accommodate the use of the 311 code as a non-emergency public safety phone number by letter dated September 25, 1996.

Funding for the project came from two sources. The DOJ's Office of Community Oriented Policing Services gave BCPD a \$350,000 grant for the two-year project. BCPD used the money to add nine terminals for the new system. AT&T, which designed the software, donated the phone lines for the 311 terminals and estimates that it has invested one million dollars in the program. AT&T and federal officials will study police response, the frequency of calls, how well the public uses the new number and how effective police are at satisfying the callers.

The matter was considered at the MDPSC's Administrative Meeting of August 28, 1996. During the course of this meeting, there was a lengthy discussion regarding the need for a non-emergency public safety phone number; the advantage of a new three-digit code in lieu of an "800" number; the possibility of user confusion; the technical issues and problems associated with implementation; the potential effects on the 911 system and the costs of the project and its funding. After carefully considering the positions of the parties, the MDPSC approved AT&T's request for assignment of the 311 code for a two-year trial period.⁵ The MDPSC also directed AT&T to file status reports concerning the trial every six months during the period of the trial.

After receiving the MDPSC's approval, BCPD instituted a public education campaign designed to teach Baltimore City

⁵ At the Administrative Meeting, AT&T requested, based on a suggestion from BCPD, that the test period be for two years rather than the one-year trial originally suggested in its petition.

residents when it is appropriate to use the new number. This public education campaign included buying ads in local papers and distributing T-shirts and refrigerator magnets to promote the new number. On its first day of operation, October 2, 1996, BCPD's new three-digit non-emergency police number appeared to be a success. In its first day of operation, dispatchers handled more than 1,400 routine police service calls.⁶ Even before local and national law enforcement announced the program, 132 people called the new 311 program and were directed to police districts where their problems could be handled.⁷

IV. CONCLUSION

The MDPSC hopes this information is helpful to the FCC in reaching its determination concerning DOJ's request that this Commission reserve the 311 code on a national basis for use by communities for non-emergency police telephone calls. Baltimore City is the first city in the United States to experiment with a dedicated non-emergency N11 number. As noted earlier, the purpose of the 311 trial is to relieve the City's 911 system of non-emergency calls from the public. This system provides an easy-to-use alternative to notify the police in case of non-life threatening situations and will improve the ability of officers to address high profile calls and establish police to community interaction.

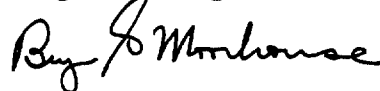
⁶ The Washington Post, B6 (October 5, 1996).

⁷ Tulsa Tribune, C5 (October 4, 1996).

The overburdening of the 911 system is a national problem. Many other jurisdictions already have expressed an interest in Baltimore City's pilot project. A nationally standardized number may make these programs more effective and lessen the need for public education in the future.

In the event that the FCC determines not to reserve the 311 code at this time, the MDPSC respectfully requests that the Commission refrain from any action which might compromise Baltimore City's ongoing trial.

Respectfully submitted,



Bryan G. Moorhouse
General Counsel



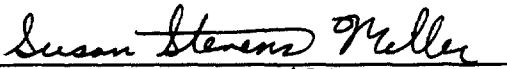
Susan Stevens Miller
Assistant General Counsel

Maryland Public Service Commission
6 St. Paul Street
Baltimore, Maryland 21202
(410) 767-8038

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Maryland Public Service Commission's Initial Comments was served on Joseph E.Brann, Director, Office of Community Oriented Policing Services, this 9th day of October, 1996, by mailing, postage prepaid to:

Joseph E.Brann, Director
Office of Community Oriented
Policing Services
Department of Justice
1100 Vermont Avenue, N.W.
Washington, D.C. 20530


Susan Stevens Miller
Assistant General Counsel

STATE OF MARYLAND
PUBLIC SERVICE COMMISSION

5/11/94
APPENDIX A

ORDER NO. 71702

IN THE MATTER OF THE PETITION OF * BEFORE THE
THE WASHINGTON POST COMPANY * PUBLIC SERVICE COMMISSION
REQUESTING THE ASSIGNMENT OF AN * OF MARYLAND
N11 CODE.

*
CASE NO. 8582
*

This matter comes before the Commission on appeal from a Proposed Order of Hearing Examiner entered in this case on September 9, 1994. Appeals were taken by The Washington Post Company ("Post"), The Baltimore Sun Company ("Sun") and the Commission's Staff. The Post and the Sun urge us to overturn the Hearing Examiner's decision and assign each company an N11 code on a trial basis. Staff also argues that the Hearing Examiner's decision should be overturned and the proposed trials permitted. Bell Atlantic of Maryland ("BA-Md" or "Company") and the Office of People's Counsel ("OPC") filed reply memoranda. OPC and BA-Md support the Hearing Examiner's decision that the trials would not be in the public interest.

On July 28, 1993, the Post filed a Petition requesting assignment of an N11 code on a trial basis. On August 23, 1993, the Commission delegated the Petition to the Hearing Examiner Division for hearing. A prehearing conference was scheduled for October 13, 1993. Notice of the conference and Petition was provided to the public.

At the prehearing conference, Petitions to Intervene, filed by BA-Md, the Sun, the WBAL Division of the Hearst Corporation ("WBAL"), MCI Telecommunications Corporation ("MCI"), AT&T Communications of Maryland ("AT&T"), the Middle Atlantic

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Payphone Association ("MAPA") and Infodial, were granted. The parties identified and listed issues pertinent to the proceeding, and procedural dates were established.

On November 12, 1993, the Sun amended its Petition to Intervene to request the assignment of an N11 code on a trial basis. In accordance with the schedule, the Post filed direct testimony on November 15, 1993. The Sun was directed to file direct testimony by December 15, 1993. Parties filed responsive testimony on January 5, 1994 and rebuttal testimony on February 11, 1994. Cross-examination of witnesses occurred during hearings held on March 23-25, 1994. The parties filed initial briefs by May 2, 1994 and reply briefs by May 16, 1994. Another round of briefs, dealing with issues raised by MAPA, was permitted. These briefs were filed on June 16, 1994.¹

As noted above, this proceeding originated with the Post's Petition requesting the assignment of an N11 code on a trial basis. Through this code, the Post intends to make information services available to the public. The Post proposes operating an N11 "gateway." This gateway would be accessed by callers dialing the N11 code. A recorded menu would list the information services available on the Post's gateway. Callers would select a particular information service and access it by dialing the code listed for that service.

¹ After the hearings, Infodial filed an application for a trial N11 number. Infodial's request was rejected by the Hearing Examiner. Infodial did not appeal the Proposed Order.

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Under the Post's proposal, the information service would be provided either directly by the Post or by some other information service provider ("ISP") that has rented space on the Post's voice storage system. The Post plans to charge callers a set fee for calls of five minutes or less. Also, the Post would offer certain premium services to callers for higher fees. The Post states that it would charge other ISPs reasonable fees for listing and operating on the gateway. While the Post contends that the Commission lacks authority to directly regulate these fees, it believes that the Commission could require BA-Md to cap the charges which BA-Md bills on behalf of codeholders.

Unlike the Post, the Sun proposes being the sole ISP operating through its N11 Code. Also, contrary to the Post proposal, the Sun prefers not to have a cap imposed on the prices it can charge for calls.

Both the Post and the Sun suggest a two-year trial of their proposed services. In order to avoid conflicts in areas where both the Post and the Sun want to serve, the applicants ask that they each receive their own code.

The Hearing Examiner found that the requested trials should not be granted. The Hearing Examiner concluded that using the limited number of codes available for information services would create a special class of ISPs with an advantage over competitors using less convenient access. This inferior access would make it difficult for ISPs which do not hold N11 codes to compete, to the detriment of the public.

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The Hearing Examiner also concluded that the Post's gateway proposal did not resolve this scarcity problem. The Hearing Examiner found that the limited number of codeholders, coupled with the unregulated status of ISPs, raised the possibility of oligopolistic abuses. Finally, the Hearing Examiner found that the N11 codes should be reserved for non-commercial public uses.

The Post, the Sun, and Staff noted appeals to the Proposed Order. In their Joint Memorandum on Appeal, the Post and the Sun ("Appellants") take exception to four of the findings of the Hearing Examiner.

First, the Appellants object to the finding that demand for N11 codes exceeds supply. According to the Appellants, this conclusion involves speculation as to the future demand for this service and ignores the value of the trials as a way to test this belief.

Second, the Appellants contend that the Hearing Examiner's concern about scarcity and competitive advantage are not supported by the record. According to the Appellants, the evidence shows that the number of N11 codes available meets or exceeds ISP demand for them at the prices proposed by BA-Md. Therefore, they say that the proposed trials would be an ideal way to gauge the desirability of using N11 to access low-cost information services, without any risk of sustained competitive advantage. The Post argues that its gateway will allow ISPs who lack resources to share the costs of establishing N11 service, thereby promoting competition by reducing barriers to entry.

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Third, Appellants object to the Hearing Examiner's decision that the N11 codes should be reserved for non-commercial public interest uses. Appellants argue that N11 is not technically or economically suitable for uses on a nationwide basis as an access vehicle to non-commercial public interest uses. According to Appellants, the use of non-commercial N11 codes raises problems of nationwide uniformity and implementation expenses that do not exist under currently available alternative access arrangements such as 800 numbers.

Finally, the Appellants take issue with the Hearing Examiner's suggestion that they pursue the 555-XXXX alternative. The Appellants contend that the record is replete with evidence of BA-Md's delaying tactics and reluctance to assist ISPs. Despite BA-Md's assertions to the contrary, they claim the Company has consistently dragged its feet, arguing that it would take a long time to implement 555-XXXX service because of time and resource constraints. According to the Appellants, BA-Md should not be permitted to continue these delaying tactics.

Staff also filed a Memorandum on Appeal, arguing that the Hearing Examiner erred in concluding that the two-year trial of N11 codes was not in the public interest. Staff contends that N11 dialing currently is under-utilized and, therefore, that the Commission should ensure that scarce public resources are used for maximum public benefit.

Staff also avers that it was premature for the Hearing Examiner to conclude that N11 codes will create an unregulated oligopoly. According to Staff, the Commission should not reach

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this conclusion until it has heard from all potential ISPs. Staff believes the problem of competing interests can be favorably resolved and should not stifle the progress of the trial. Finally, Staff disagrees with the Hearing Examiner's conclusions that 555-XXXX service is a reasonable alternative.

BA-Md and OPC filed reply memoranda. Both memoranda urge that the Proposed Order of Hearing Examiner be upheld. In response to the Appellants' argument, BA-Md takes the position that demand for N11 code assignments exceeds supply, noting the many firms that have requested the service from BA-Md. Further, BA-Md contends that even on a trial basis, the assignment of codes could give Appellants a competitive advantage. BA-Md agrees with the Hearing Examiner's conclusion that N11 codes should be reserved for "public service" uses and argues that these services can be provided on a nationwide basis. Finally, BA-Md agrees that ISPs should be encouraged to use alternative dialing arrangements such as 555-XXXX service.

OPC also disagrees with Appellants' contention that the number of ISPs interested in obtaining N11 codes does not currently exceed the number of codes available. OPC argues that assignment of N11 codes would give Appellants a competitive advantage particularly since the Commission has no regulatory authority over the Appellants. Finally, OPC disagrees with Appellants' argument that N11 codes are unsuitable for non-commercial public purposes.

Based upon careful consideration of the evidence on the record and the memoranda filed on appeal, the Commission agrees

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with the Hearing Examiner and finds that the requested trials are not appropriate. The Commission agrees it is preferable public policy to have more plentiful ISP access arrangements in Maryland than would be afforded by the use of a few N11 codes. It is not in the public interest to use access arrangements that could limit the number of ISPs available to consumers.

The Commission disagrees with the Appellants' contention that supply of N11 codes exceeds demand. During the proceedings below, four parties requested assignment of an N11 code. Additionally, BA-Md presented evidence of 13 requests for N11 code use in Maryland from entities who were not parties to this proceeding. If those four requests had been granted, no other ISP could obtain an N11 code in the Maryland portion of the Washington, D.C. or Baltimore metropolitan areas for at least the next two years. If and when the codes were assigned to ISPs on a permanent basis, non-codeholding ISPs would be at a severe disadvantage.

Similarly, we agree with the Hearing Examiner that the best policy is to reserve the N11 codes for non-commercial public purposes. The Appellants' argument that N11 codes are not suited for public purposes is not supported by existing experience. Throughout most of the country, telephone subscribers use the 911 code to obtain emergency services, even though the service is, in effect, provided locally or regionally. The successful use of this code to provide emergency services demonstrates the benefits of utilizing the N11 codes for public purposes. While we agree with Appellants that the public service uses discussed in this

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proceeding have yet to be defined or decided, we believe that the limited number of N11 codes should be kept in reserve while these uses are debated.²

In reaching this conclusion, we recognize that currently there are no alternative dialing arrangements available for ISPs. Both the Post and the Sun have expressed concerns about the willingness of BA-Md to develop the alternative dialing arrangements which would benefit ISPs. This is a matter of specific interest to the Commission as well. Therefore, the Commission directs BA-Md to work with the Sun and the Post to provide the 555-XXXX service. In order to facilitate the deployment of 555-XXXX service, the Commission shall keep this docket open so that any party who has a concern regarding BA-Md's development of the 555-XXXX service can bring the matter before the Commission's Hearing Examiner Division.

IT IS, THEREFORE, this 10th day of January, in the year Nineteen Hundred and Ninety-five, by the Public Service of Maryland,

ORDERED: (1) That the applications filed by The Washington Post Company and The Baltimore Sun to obtain N11 codes on a trial basis are denied.

(2) That this docket shall remain open for any further purposes which may be deemed necessary.

² Currently, this debate is being conducted at the Federal Communications Commission ("FCC") which has pending before it an emergency rulemaking petition seeking the reservation of one or two N11 codes for access to telephone relay systems. Comments have also been filed before the FCC concerning state and federal government access through the codes.

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(3) The Proposed Order of the Hearing

Examiner is affirmed.

Frank O. Heintz
Charles W. Ly
W. H. Henderson
Swanne Brown
Commissioners